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In re Application of
Kimihiro Abe
Application No. 10/043,110
Filed: January 14, 2002
Attorney Docket No. Q68048

OFFICE OF PETITIONS
DECISION ON PETITION

This is a decision on the Petition Under 37 CFR 1.53(e)(2), filed April 3, 2002, in response to a Notice to File Missing Parts of Nonprovisional Application.

Application papers in the above-identified application were filed on January 14, 2002. On February 11, 2002, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, indicating January 14, 2002, as the filing date, but noting that Figure 6 described in the specification appeared to have been omitted from the application. The Notice set a two-month period for reply, with extensions of time available under 37 CFR §1.136(a).

In response, Petitioner filed the instant petition and Preliminary Amendment omitting the reference to Figure 6 in the specification.

The Manual of Patent Examining Procedure ("MPEP"), § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

The mailing of a 'Notice of Omitted Item(s)' will permit the applicant to either: (1) promptly establish prior receipt in the USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "accept the application as deposited in the USPTO [and not] respond to the 'Notice of Omitted Item(s)', thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to cancel all references to the omitted drawing[s]. . . ." See MPEP 601.01(g).

In this instance, Petitioner elected option (3).

Accordingly, the petition is **GRANTED**.

However, since the application as filed described a Figure 6, and no drawing labeled Figure 6 was present on January 14, 2002, the application was prima facie incomplete. See MPEP 506 and 608.01(f). Thus, the petition and the petition fee were necessary to correct applicants' filing error. Therefore, the petition fee will not be refunded.

The application is being returned to Technology Center AU 2833 for processing of the Preliminary Amendment.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

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